S.B. CIVIL WRIT PETITION NO.1930/2005

Phusa Ram Vs. State of Rajasthan & anr.

Date : 4.4.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. R.S. Gill, for the petitioner.

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Heard learned counsel for the petitioner.

The grievance of the petitioner is that the Executive Engineer, though issued notice to the petitioner to show cause as to why the moga (outlet) may not be correct so that the petitioner may not take excess water, but he will pass fresh order against the petitioner and will execute the order without giving any opportunity to the petitioner to prefer appeal against the said order passed by the Executive Engineer.

There is no material available on the record to believe the contention of the petitioner and there appears to be no reason for granting any indulgence in such matters where there are allegations of taking excess water by altering the outlet.

So far as the prayer of the petitioner to stay the operation of any order which may be passed by the Executive Engineer in this matter, for few days so that the

petitioner may prefer the appeal against that order is concerned, there appears to be no reason in the facts of the case to pass such order which will amount to accept the argument of learned counsel for the petitioner that the Executive Engineer will definitely pass the order against the petitioner and there shall be merit in the appeal of the petitioner and, therefore, he is entitled to stay. There is no reason for deviation from the procedure as prescribed under law. The petitioner has right to prefer appeal against any order which may be passed by Executive Engineer against him and the appellate authority may pass appropriate order who has power to even set aside the order of Executive Engineer and correct the size of outlet which may be changed in pursuance of the Executive Engineer's order.

In view of the above discussion, I do not find any merit in this writ petition and accordingly, the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya